Kluwer Arbitration Blog

Countdown to RIDW24: International Arbitration – Driving Efficiency and Reducing Costs

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Arbitration has emerged as a preferred and valuable tool for resolving disputes. However, the associated costs and time can sometimes deter parties from pursuing this avenue. Fortunately, there are various strategies for parties to avoid lengthy proceedings, reduce costs, and regain control over the arbitral process. In this post, we have compiled a non-exhaustive list of practical tips and best practices to guide parties in driving cost-effectiveness in international arbitration.

Before the Arbitration

Carefully drafting your arbitration clause is crucial in order to minimise the risk of jurisdictional disputes. Consider utilising a model clause from an arbitral institution which could limit the risk of such jurisdictional objections. It is also advisable to choose an arbitral seat that has tested enforcement mechanisms with jurisdictions where the assets are located. Additionally, incorporating multi-tiered dispute resolution clauses in your contracts can also help to avoid the need for arbitration altogether, provided that these are drafted carefully to ensure enforceability and prevent prolonging the dispute resolution process.

Parties should also conduct a comprehensive early assessment of their case. Evaluating the merits, strength of the evidence, and potential legal issues, as well as getting relevant experts involved at the outset can indeed help parties in considering potential mediation and settlement options before arbitration, which can lead to much faster and more cost-effective resolutions. Furthermore, selecting experienced and cost-effective lawyers who are well-versed in the arbitration process will ensure streamlined proceedings.

During the Arbitration

Once the arbitration is underway, parties can first seek to reduce costs by using procedural tools at their disposal, such as to seek a summary dismissal of claims that manifestly lack merit (or have crucial issues that would resolve the case, particularly legal issues, resolved by way of a preliminary issues hearing). Parties can also consider bifurcation but only if it genuinely reduces the number of legal issues at stake, or utilise expedited procedures (e.g. such as those in fast-track

arbitration) specially designed for cases with lower complexity.

Parties can also streamline their procedure by actively shaping its contours themselves. They may, for instance, agree to short and achievable timelines, restrict the number of rounds of written submissions and encourage limitations on their lengths to prevent over-lawyering and increased costs, reduce the number of document production requests and/or limit their scope and requirements (thus avoiding unnecessary or extensive discovery), limit the number of witnesses and rounds of post-hearing briefs, or even set firm deadlines for arbitrators to issue their final award (if not stipulated by law).

Lastly, parties can significantly reduce costs by efficiently managing the conduct of the arbitration procedure. In doing so, they should primarily select experienced and available arbitrators with good case management skills to keep the process on track, make full use of case management conferences (CMCs) to agree on the rules and general framework of the procedure, leverage technology (videoconferencing, virtual hearings, etc.) to make arbitrations greener, utilise Artificial Intelligence tools to facilitate document review and case analysis, select and manage expert witnesses strategically (joint expert reports should also be considered), and delineate the precise contours and questions for the hearing to ensure a focused and efficient proceeding.

Join us at the Riyadh International Disputes Week (RIDW24) taking place from 3 to 7 March 2024 to further explore these strategies and engage in fruitful discussions on driving efficiency and reducing costs in international arbitration. We look forward to attending the SCCA24 Conference and welcoming you!

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